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October 16, 1997

VIA Messenger

William F. Caton, Acting Secretary
Office of the Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, DC 20554

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OCT 16 1997

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

Re: MM Docket No. 95-176 - Petition for Immediate Stay

Dear Mr. Caton:

Enclosed for filing please find an original and eleven (11) copies of NIMA International's Petition for Immediate Stay in the above-referenced docket.

We are also this day forwarding two (2) copies of the Petition to the Cable Services Bureau.

Finally, we are also sending one (1) extra copy of the Petition, which we ask that you date-stamp and return to the messenger. We appreciate your assistance.

Please do not hesitate to contact me if you have any questions.

Sincerely,

Heather L. McDowell (p)

Heather L. McDowell

Enclosures

11
10/16/97

FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Closed Captioning and Video Description)
of Video Programming)
) MM Docket No. 95-176
Implementation of Section 305 of the)
Telecommunications Act of 1996)
)
Video Programming Accessibility)

NIMA INTERNATIONAL PETITION FOR IMMEDIATE STAY

Pursuant to sections 1.43, 1.44(e) and 1.429 (k) of the Commission's rules, 47 C.F.R. §§ 1.43, 1.44(e), and 1.429(k), NIMA International ("NIMA") hereby petitions the Commission to stay application of the mandatory closed captioning obligations adopted in its Closed Captioning Order^{1/} to long-form advertising pending the Commission's ruling on NIMA's Petition for Reconsideration of those rules, which is being filed by separate request simultaneously with this Petition for Stay. The long-form advertising industry is uncommonly disadvantaged by the current rules and will suffer irreparable injury unless the Commission grants an immediate stay. Indeed, long-form infomercial advertisers appear to be the only program providers that may be forced to caption *all* of their programs as of January 1, 1998.

^{1/} Closed Captioning and Video Description of Video Programming, Implementation of Section 305 of the Telecommunications Act of 1996, Video Programming Accessibility, Report and Order, MM Docket No. 95-176, FCC 97-279, (Adopted August 7, 1997; Released August 22, 1997) ("Closed Captioning Order").

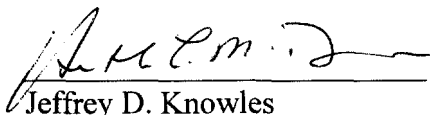
As more fully explained in the Petition for Reconsideration, which is fully incorporated herein by reference, long-form infomercial advertisers do not generate income based on "channel" revenues. Rather, their revenues are generated by sales of products and services directly to consumers. The two revenue-based exemptions established in the Closed Captioning Order provide exceptions to the general captioning requirements when it would require expenditure of more than "2% of the gross revenues on captioning, or "the channel" produced gross revenues under \$3,000,000 in the prior year. Thus, the Commission's rules instruct that channel-derived revenues should be used to measure whether or not a program provider is exempt from the captioning obligations.

Yet, because their income is produced by sales to consumers, long-form advertising providers cannot determine which channel produced their revenues. It is also not feasible for an advertiser to ascertain during the production phase on which channels, throughout the U.S., a long-form advertisement may be broadcast; it would be even more senseless to try to sort out whether each and every one of those channels might be eligible for one of the revenue-based exemptions. Infomercial advertisers anticipate, however, that they may bear the brunt of any captioning responsibility, because video programming distributors may insist upon it as a condition of airing the commercial, and because it is most cost-effective and efficient to caption at the production stage. This class of providers, therefore, will be severely disadvantaged relative to other programming providers, since they will have utterly no means to ascertain whether or not any individual infomercial program may be exempt. Unlike virtually every other person or entity subject to the rules, infomercial advertisers will be forced to caption every single

program that they air after January 1, 1998. Furthermore, immediate relief is needed; advertisements due to air after the first of the year are already in the production stages, and this patently unjust situation will only grow more difficult as January 1st approaches. To prevent this unreasonable discrimination and the harm that will ensue, the Commission must stay application of its closed captioning rules to long-form advertising pending ruling on NIMA's petition.

In addition, as set forth in the Petition for Reconsideration, the Commission's decision to require captioning of long-form advertising in the first instance is fatally flawed and must be rejected on reconsideration. Yet again, planning for advertisements due to run after January 1, 1998 are underway now. Thus, absent a stay, long-form advertising providers will be forced to incur the burden and expense of captioning advertisements that should, after the Commission considers NIMA petition, be exempt. The Commission must act to avoid such harm by granting an immediate stay of its rules as applied to long-form advertising.

Respectfully submitted,



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